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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of: **Alain DELACHE et al.**

Group Art Unit: **3772**

Serial Number: **10/506,979**

Examiner: **Nihir B. Patel**

Filed: **September 8, 2004**

Confirmation Number: **6948**

For: **APPARATUS TO ASSIST A PATIENT'S BREATHING WITH A  
VARIABLE RAMP PERIOD TO RISE TO TREATMENT  
PRESSURE**

Attorney Docket Number: **062219**

Customer Number: **38834**

**REPLY BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

February 7, 2007

Sir:

This paper is filed in response to the Examiner's Answer mailed December 26, 2006.

In the Examiner's Response to Argument on page 3, item (10) of the Examiner's Answer, the Examiner cites a decision which holds that recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Although the Examiner's recitation of the law is correct, the Examiner's application is misplaced. More specifically, the Examiner argues that a claimed structural element of the invention (a control unit to adjust the pressure delivered by the blower at the level of the mask) is met by Matthews et al. simply because Matthews et al. discloses a "controller". Apparently, the Examiner considers a controller as having the same structure as the claimed control unit although each is configured to perform a different function. As noted in the appeal brief, Matthews et al. teaches that the

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request processor 106 determines whether control should be turned over to the control module associated with the monitoring module making the request. Once a controller in a control layer is activated, it controls the operation of the pressure support system and maintains control until the condition that activated the controller is resolved or a higher priority controller takes over. Thus, this controller is not “structured” in the same way as the control unit of the present invention which adjusts the pressure delivered by said blower at the level of said mask.

The court decision cited by the Examiner does not support the Examiner’s position. This decision pointed out that a rejection is proper over a reference which taught all of the structural limitations of the claim for the intended use of mixing developer. The only difference between the claim and the cited art was that the mixer was only partially submerged in the developer material. This decision would support a rejection if the prior art apparatus teaches all the structural limitations of the claim. In contrast, the Examiner is referring to one element of the present invention and attempts to equate this element as being structurally equivalent to the controller of Matthews et al. As noted above, the controller of Matthews et al. is not structured in the same way as the control unit of the present invention.

The Examiner also argues that the control unit of Matthews et al. would adjust the pressure delivered by the blower at the level of the mask, by highlighting paragraph [0072] of Matthews et al. The portion highlighted by the Examiner simply states that while in control, each controller treats the specific event/condition by performing its control functions, such as adjusting the pressure output from the pressure support system via the pressure generating

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system. Matthews et al. goes on to teach that each controller operates in a unique fashion based on the type of event/condition being treated. In the example highlighted by the Examiner, the Examiner must then consider the claimed control unit as corresponding to one of the controllers of Matthews et al. which adjusts pressure delivered by said blower at the lever of said mask. With this interpretation, Matthews et al. would fail to meet the limitation of a ramp module connected to the control unit.

In regard to applicants' arguments with respect to the ramp module, the Examiner uses the same logic to argue that Matthews et al. meets this limitation. In other words, the Examiner argues that an element of the claimed invention is considered structurally the same because "it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations." Again, the Examiner's reasoning is flawed because the court decision cited by the Examiner relates to a claimed apparatus, not individual elements of a claimed apparatus. Furthermore, the claimed elements of the present invention are structurally distinct from the elements taught by Matthews et al.

The Examiner now points out that he has broadly considered the ramp module of Matthews et al. to be connected to the comparator 140 (snore detection module 140) "electronically." However, even with this interpretation, Matthews et al does not teach that the comparator "sends the corresponding data to the ramp module which provides the control unit

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with a value of pressure  $P_m$  that will speed up with respect of time during this said ramp period, so that the rise of pressure at patient's mask is accelerated within the same said ramp period.

For at least the above reasons and the reasons set forth in the appeal brief, the honorable Board is respectfully requested to reverse the rejection of the Examiner.

If any additional fees are due in connection with this submission, please charge Deposit Account No. 50-2866.

Respectfully submitted,

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